

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HIPOLITO GARCIA RODRIGUEZ
Claimant

VS.

FARMLAND NAT'L BEEF PACKING CO.
Respondent

AND

ZURICH AMERICAN INSURANCE CO.
Insurance Carrier

Docket No. 1,020,802

ORDER

Claimant requested review of the December 5, 2006 Award by Administrative Law Judge (ALJ) Pamela J. Fuller. The Appeals Board (Board) placed this matter on its summary docket as of February 13, 2007.

APPEARANCES

Stanley R. Ausemus, of Emporia, Kansas, represents the claimant. Shirla R. McQueen, of Liberal, Kansas represents the respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The only significant issue presented to the ALJ was the nature and extent of claimant's permanent impairment as a result of the his compensable November 24, 2004

injury.¹ The ALJ concluded, based upon the medical reports and opinions of Drs. Williams and Stein, that the claimant suffers from a 5 percent permanent partial disability to the whole body. Claimant contends that the report and rating of Dr. Murati are the most thorough and appropriate. And as such, the Award should be amended to reflect those opinions, thus entitling the claimant to an award of 10 percent impairment to the body as a whole.

Respondent argues that the Award should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board finds that the ALJ's Award should be affirmed.

The sole dispute stems from the nature and extent of claimant's permanent partial impairment resulting from his compensable injury. Two physicians have opined that claimant's permanent impairment is 5 percent pursuant to the *Guides*.² A third physician, Dr. Pedro Murati, opined that claimant sustained a 10 percent permanent impairment as a result of his injury.

The disparity between Dr. Murati's opinions and that expressed by Drs. Williams and Stein stem from a single source. According to Dr. Murati, claimant exhibited "signs and symptoms of radiculopathy" during his July 21, 2005 examination. These radiculopathy signs were not confirmed by objective testing nor were they consistently noted by the physicians. Claimant was examined by Dr. Stein on February 13, 2006, who observed no such complaints. In fact, his report specifically states that the "[p]hysical examination reveals no evidence of nerve root deficit to make the diagnosis of radiculopathy as required under the AMA *Guides*".³

The ALJ indicated that she was more persuaded by the reports of Dr. Williams, the treating physician, and that of Dr. Stein, over those offered by Dr. Murati. This Board finds no reason to disturb that finding and affirms the 5 percent permanent impairment finding.

¹ While future medical treatment and the unauthorized medical allowance were listed as issues, it does not appear from the briefs that those issues were seriously in dispute. Moreover, they were not argued in claimant's brief to the Board.

² All references herein are to the 4th edition of the *Guides* (American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*, (4th ed.). and reflect whole body impairments.

³ Stipulation (filed June 8, 2006); (Dr. Stein's Feb. 13, 2006 IME Report at 4).

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Pamela J. Fuller dated December 5, 2006, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of March, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Shirla R. McQueen, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge